



PATENT

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10/2/95

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant: Rigg et al.

Serial No.: 08/110,274

Filed: August 23, 1993

FOR: METHOD AND APPARATUS FOR CUSTOMIZING FACIAL
FOUNDATION PRODUCTS

Group: 1203
Examiner: D. Ore

Edgewater, New Jersey 07020
October 2, 1995

REPLY BRIEF

Assistant Commissioner For Patents
Washington, D.C. 20231

Sir:

The Examiner contends in her Answer that the rejection of claims 12-17 and

19-21 "stand or fall together because Appellants' Brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof". The Examiner is in error.

"Stand or fall together" is not a magical incantation. Applicants stated in their Brief at page 4 under GROUPING OF THE CLAIMS that the Board was requested "to consider separately the following two groups of claims". This phraseology is equivalent to stating that the claims do not stand or fall together. Indeed, 37 C.F.R. 1.162(c)(5) is interpreted under MPEP § 1206 at page 1200-6. There it states:

"For Example, if claims 1 to 4 are rejected under 35 U.S.C. § 102 and appellant considers claim 4 to be separately patentable from claims 1 to 3, he or she should so state in the "Grouping of Claims" section of the Brief, and then give the reasons for separate patentability in the 35 U.S.C. § 102 portion of the "Argument" section (i.e. under 37 C.F.R. 1.192(c)(6)(iii)) (emphasis added).

It is evident from the MPEP that stating claims are to be separately patentable would be just as acceptable language as "do not stand or fall together".

In the event the Examiner maintains her contention, the present Reply Brief should be considered supplementary to the main Brief sent May 12, 1995. The Board by this Reply Brief should consider claims 12-17/19 and 20-21 not to stand or fall together. The Board should separately consider the following two groupings of claims:

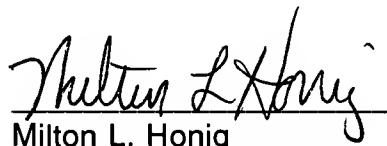
Group I covering claims 12-17 and 19

Group II covering claims 20-21.

The Examiner has indicated appellant did discuss the differences of the claimed groupings in the original Brief.

Appellants respectfully request a Decision at the Board's earliest convenience.

Respectfully submitted,



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